IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1442 OF 2007

Shashishekhar Bhartiya S/o
Jaimurti Pasi ..Petitioner

Vs.

Hemant Shah and ors. ..Respondents

Mr. Rajesh Dixit i/by V.R. Tripathi and Associates for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : May 04, 2007.

P.C.:

. RAD Suit No. 1607 of 1998 came to be decreed ex parte on 5/1/2004. The plaintiff therein took out Misc. Notice No. 373 of 2005 praying for direction to hand over the possession of the W.C. facility.

. The learned Judge of the Small Causes Court discharged the said notice by observing that the suit was already decided and there was no lis pending. The prayer for temporary injunction or the direction sought for could be granted in aid or an auxiliary of

final hearing of the suit and, therefore, there was no suit pending before the trial court, the Misc. Notice could not be entertained. The remedy for the plaintiff was to get the execution proceeding initiated in respect of the decree dated 5/1/2004.

. This view taken by the trial court cannot be held to be erroneous or perverse so as to cause interference in a petition under Article 227 of the Constitution.

. The petition is, therefore, rejected summarily.

(B.H. Marlapalle,J.)